

In The Matter Of:

People v.

Indictment

March 8, 2022

Peter Kent

1 SUPREME COURT OF THE STATE OF NEW YORK
2 BRONX COUNTY : CRIMINAL TERM : PART FYP-32

3 -----X
4 PEOPLE OF THE STATE OF NEW YORK

(RETENTION HEARING)

-against-

Docket No.

5 Defendant

Indictment No.

6 -----X
7 Bronx Hall of Justice
8 265 East 161st Street
9 Bronx, New York 10451

Date: March 8, 2022

10 B E F O R E:

HON. NAITA A. SEMAJ-WILLIAMS,
Supreme Court Justice

11 A P P E A R A N C E S:

(Remain as previously noted.)

12 Peter M. Kent
13 Senior Court Reporter

000

14 THE CLERK: This is an in-person matter, [REDACTED]
15 on the [REDACTED] Calendar, in the matter of the People of the
16 State of New York against [REDACTED], under Indictment
17 [REDACTED]

18 Please state your appearances for the record.

19 MS. FLORIO: Good afternoon, Your Honor.

20 Dawn Florio, from the Dawn Florio Law Firm, 488
21 Madison Avenue, 20th Floor, New York, New York, for
22 Mr. C [REDACTED] W [REDACTED], who is present.

23 MR. MANISCALCO: Joseph Maniscalco,
24 M-a-n-i-s-c-a-l-c-o, for the People.

25 Good afternoon, everyone.

1 THE COURT: Good afternoon.

2 So, this was scheduled to start at 12:00 o'clock,
3 and I believe on the last date I asked that everybody aim to
4 be here before 12:00 so we can get started at exactly 12:00
5 o'clock because there are multiple witnesses, and defense
6 counsel's only available on Tuesday, and the Court also has
7 a calendar.

8 So, assuming we don't finish today, I am just
9 reminding the parties to be here on time, or early, so we
10 can start at the time that we agreed we are going to start.

11 Understood?

12 MS. FLORIO: Yes, Judge.

13 MR. MANISCALCO: Yes, Judge.

14 THE COURT: All right.

15 Is there anything we need to address before we
16 resume?

17 MR. MANISCALCO: No, Judge. The People are ready
18 to call another witness.

19 THE COURT: Go ahead.

20 MR. MANISCALCO: At this time, the People call
21 Police Officer Gjonbalaj.

22 COURT OFFICER: Witness entering.

23 (Whereupon, the witness, Police Officer Taulant
24 Gjonbalaj, entered the courtroom and took the stand.)

25 COURT OFFICER: Remain standing. Raise your right

1 hand.

2 THE CLERK: Do you swear or affirm that the
3 testimony you will give will be the truth, the whole truth,
4 and nothing but the truth?

5 THE WITNESS: I do I swear.

6 THE CLERK: Please state and spell your first and
7 last name.

8 THE WITNESS: Police Officer Taulant Gjonbalaj.
9 Do you want me to spell it you said?

10 THE CLERK: Yes.

11 THE WITNESS: First name is Taulant,
12 T-a-u-l-a-n-t. Last name is Gjonbalaj, G-j-o-n-b-a-l-a-j.

13 THE CLERK: State your shield number.

14 THE WITNESS: 23964.

15 THE CLERK: Command?

16 THE WITNESS: 0-4-8.

17 THE CLERK: Thank you.

18 THE COURT: Your shield was 23961?

19 THE WITNESS: 23964.

20 DIRECT EXAMINATION

21 BY MR. MANISCALCO:

22 Q. Good afternoon, Officer.

23 A. Good afternoon.

24 Q. Just one more time for the record, could you please
25 state your full name, rank, shield, and command?

1 A. My name is Taulant Gjonbalaj, Shield 23964,
2 4-8 Precinct.

3 Q. Officer, how long have you worked as a New York City
4 Police Officer?

5 A. A little over five years.

6 Q. And have those five years been with the 48th Precinct?

7 A. Yes, sir.

8 Q. Now, Officer, I am going to direct your attention to
9 January 18th, 2022, at approximately 9:00 p.m. until 9:30 p.m.,
10 in the vicinity of 2356 Lorillard Place here in Bronx County,
11 okay?

12 A. Uh-huh.

13 Q. Were you working as a New York City Police Officer on
14 that date, at that time, and at that location?

15 A. Yes, sir.

16 Q. Were you working alone or were you with partners?

17 A. I was with two partners.

18 Q. Who were your partners?

19 A. Officer Barthelemy and Officer Acostavilla.

20 Q. And were you in uniform or in plainclothes?

21 A. Uniform.

22 Q. And how about your partners?

23 A. Also in uniform.

24 Q. And how were you all getting around at that time?

25 A. In an unmarked police vehicle.

1 Q. And what was your assignment and tour?

2 A. My assignment was Public Safety.

3 Q. Officer, did you have occasion to assist in an arrest
4 at that date, time, and location?

5 A. Yes, sir.

6 Q. What was the name of the person you arrested?

7 A. Camrin Williams.

8 Q. And do you see Mr. Williams in the courtroom today?

9 A. Yes, sir.

10 Q. Could you just point to him and describe an article of
11 clothing?

12 A. He is wearing sweats, black sneakers, um, I believe,
13 black jeans.

14 MR. MANISCALCO: Let the record reflect that the
15 witness is indicating the defendant.

16 THE COURT: Yes.

17 Q. Now, Officer, could you take us through the
18 circumstances that led up to Mr. Williams' arrest?

19 A. Yes, sir.

20 Um, prior to my vehicle getting to the location, the
21 other vehicle consisted of Officer Kissane, Officer Pennant, and
22 Officer Rodriguez. They drove past 2356 Lorillard Place. They
23 notice a large disorderly group inside of said location, smoking,
24 drinking, playing loud music.

25 MS. FLORIO: Objection.

1 THE COURT: What did you say?

2 MS. FLORIO: I said objection.

3 THE COURT: Yes. That's sustained.

4 A. Okay. Um, so -- yeah. We met up. They said they saw
5 a group -- um, they saw a group, so we circled back. We went to
6 that location. My car got there before their car did.

7 Um, we parked, let's say, three, four buildings north
8 of that location. I got out of the vehicle. I was seated in the
9 front right of the vehicle. I got out of the vehicle and I was
10 walking towards the listed location.

11 Q. And when you say "the listed location," do you mean
12 2356 Lorillard Place?

13 A. Yes, sir.

14 Q. So, take us through what happened as you are
15 approaching this location?

16 A. So, as I am walking to the location, um, outside of the
17 building was two individuals. One of the individuals his name is
18 [REDACTED] His alias is [REDACTED] He was standing outside of
19 the location.

20 As I am getting closer and closer to it, he goes on his
21 cell phone. He picks it up, puts it to his face and he says,
22 "hey, Siri, call [REDACTED]"

23 Q. And is [REDACTED] a familiar name to you?

24 A. Yes.

25 Q. How do you know the name [REDACTED]?

1 A. It's a -- he is a known gang member with the Rahway
2 Crips.

3 Q. Is it a nickname?

4 A. Yes. It's an alias, yeah.

5 Q. And --

6 MS. FLORIO: Objection.

7 THE COURT: What is your objection.

8 MS. FLORIO: Objection as to "alias."

9 THE COURT: What about alias?

10 MS. FLORIO: It is his RAP name, not an alias.

11 THE COURT: All right.

12 That's overruled.

13 Actually, going back to -- you said you saw
14 that -- [REDACTED] outside?

15 THE WITNESS: Yes. [REDACTED]

16 THE COURT: Did you know his name was J [REDACTED]
17 at that point?

18 THE WITNESS: Uh-huh.

19 THE COURT: Or did you know his name.

20 THE WITNESS: No, I have known him -- I known of
21 him for a while.

22 THE COURT: So, you saw someone who you were
23 familiar with outside?

24 THE WITNESS: Yes.

25 THE COURT: That person said "call -- siri, call

1 [REDACTED]?"

2 THE WITNESS: He picks up his phone and he puts
3 it near his face and he says, "hey, siri, call [REDACTED]"

4 Q. And you know [REDACTED] to be a nickname for a person,
5 correct?

6 A. Yes, sir.

7 Q. And who is that person?

8 A. [REDACTED]

9 Q. And how close in proximity is this [REDACTED]
10 standing to 2356 Lorillard Place when you hear him say this to
11 siri?

12 A. One building away, like literally like let's say 10
13 feet from the building.

14 Q. Okay.

15 And what happens after you hear him say this?

16 A. As I am approaching -- I walked past him -- and as I am
17 approaching 2356 Lorillard Place, I see two individuals exit the
18 building. One individual is covered with a -- like full face
19 mask, and the other individual is [REDACTED]. [REDACTED]
20 [REDACTED] is making a beeline to the vehicle directly parked in
21 front of the location.

22 Q. And you recognize C [REDACTED] W [REDACTED] at this time?

23 A. Yes, sir.

24 Q. And prior to this date, or this incident, were you
25 familiar with C [REDACTED] W [REDACTED]?

1 A. Yes, sir.

2 Q. And what do you do after you see M. W. [REDACTED] exit this
3 location?

4 A. I approached him and questioned him.

5 Q. And what happens after that?

6 A. So, I am questioning him in regards to what he was
7 doing at the location, if he was part of the group. I know I
8 doesn't live there. I know where he lives. And I know the
9 people that were hanging out there. And I know, I know about the
10 location. I know the location is a --

11 MS. FLORIO: Objection.

12 It's not responsive to the question.

13 THE COURT: Actually -- what was the question
14 again?

15 Q. Officer, let me back you up a second.

16 When you approached C. W. [REDACTED], just take us
17 through what happens after that initial approach?

18 A. Okay.

19 Like I said, I approached him, and I was questioning
20 him in regards to what he was doing there.

21 Q. Okay.

22 A. Like I said before, I was asking him about what he was
23 doing at the location because he doesn't live there. I know he
24 doesn't live there. I know where he lives. I know who he is.
25 And I know about the location.

1 Q. Okay.

2 And is he cooperative?

3 A. No.

4 Q. Okay, so, um --

5 THE COURT: What do you mean by "no"? What do you
6 mean by not cooperative?

7 THE WITNESS: So, like I said, when I approached
8 him, I was talking to him, he was very hesitant and very
9 eager to try to leave from the conversation.

10 He was standing there, he kept shifting his body
11 left and right, left and right. He took out his phone, he
12 started recording, which is perfectly fine. I started
13 recording.

14 Um, like I said, I started trying to ask him
15 questions as to what he was doing. He was like, "oh, come
16 on man, what are you doing? Why did you approach me?"

17 Um --

18 Q. Now, Officer, I am just going to stop you for a second
19 because you said you were recording.

20 What do you mean that you were "recording"?

21 A. Body cameras. I had my body camera.

22 Q. So, your body camera was recording this incident?

23 A. Yes, sir.

24 Q. And prior to testifying today, did you have an
25 opportunity to review your body camera?

1 A. Yes, sir.

2 Q. And was it a fair and accurate depiction of what you
3 experienced during this incident?

4 A. Yes, sir.

5 MR. MANISCALCO: Now, at this time, it's already
6 in evidence under Grand Jury Exhibit Number 6, I believe we
7 moved it in at the end of the last court appearance. I am
8 going play it for the Court and for the witness, as it is
9 best evidence as to the interaction that occurred between
10 this Officer and the defendant.

11 Now, I have People's 6 open. I am going to into a
12 file that says DWC48PCT. There is a file with, um, Police
13 Officer Gjonbalaj's name and tax number 963046.

14 I am going to open up the video file.

15 (Brief pause.)

16 Q. Officer, do you see the screen?

17 A. Yes.

18 MS. FLORIO: Judge, is it okay if I move a little
19 closer?

20 THE COURT: Yeah.

21 MS. FLORIO: Because the glass has a glare.

22 THE COURT: Yes.

23 MS. FLORIO: Thank you.

24 (Brief pause.)

25 MR. MANISCALCO: So, just for the record, Police

1 Officer Gjonbalaj's his body worn camera footage is up on
2 the screen.

3 I am playing from the beginning.

4 THE COURT: Do you want to just turn that chair
5 around and sit in that chair?

6 MS. FLORIO: Yes. Thanks a lot. Thanks a lot.
7 Give me one second.

8 THE COURT: Uh-huh.

9 MS. FLORIO: Thank you, Your Honor.

10 THE COURT: Uh-huh.

11 MR. MANISCALCO: Playing the Officer's body worn
12 camera.

13 (Video played.)

14 MR. MANISCALCO: Stopping at eleven seconds on the
15 player.

16 (Video stopped.)

17 Q. Officer, do you know this woman?

18 A. No.

19 MR. MANISCALCO: Playing from eleven seconds.

20 (Video played.)

21 Q. Now, are you walking towards the location?

22 A. Yes, sir.

23 MR. MANISCALCO: I am stopping at twenty-seven
24 seconds on the player.

25 (Video stopped.)

1 Q. I am directing your attention to the two individuals on
2 the right side of the screen, one in a blue jacket, one in a
3 black jacket.

4 Do you recognize these individuals?

5 A. The one in the black -- no, the one in blue is J [REDACTED]
6 L [REDACTED], aka "[REDACTED]"

7 Q. Okay. And is it at this point that you are hearing
8 that call [REDACTED]?

9 A. Yes.

10 MR. MANISCALCO: Playing from twenty-seven seconds
11 on the player.

12 (Video played.)

13 MR. MANISCALCO: Stopping at thirty-four seconds
14 on the player.

15 (Video stopped.)

16 Q. Officer, at this point are you able to see the location
17 that is 2356 Lorillard Place?

18 A. Yes.

19 Q. And where is it looking at the screen?

20 A. It is the door directly on the left side coming out.

21 Q. Is it the door that we just saw the two individuals
22 exiting out?

23 A. Yes, sir.

24 MR. MANISCALCO: Playing from thirty-four seconds
25 on the player.

1 (Video played.)

2 MR. MANISCALCO: Stopping at thirty-eight seconds
3 on the player.

4 (Video stopped.)

5 Q. Officer, the individual that's on the screen with the
6 gray hoody, do you recognize him?

7 A. Yes.

8 Q. And who is that?

9 A. C [REDACTED] W [REDACTED]

10 MR. MANISCALCO: Playing from thirty-eight seconds
11 on the player.

12 (Video played.)

13 MR. MANISCALCO: I am going to pause at forty-six
14 seconds on the player.

15 (Video stopped.)

16 Q. Officer, there is another police officer that is at the
17 front door of this location where there is a number of people
18 exiting. Do you know which officer that is?

19 A. It is Acostavilla.

20 Q. Officer Acostavilla?

21 A. Yes.

22 THE COURT: Could you rewind and play with the
23 sound?

24 THE WITNESS: That's the one minute buffer.

25 (Video played.)

1 Q. Um, Officer, the first minute of body worn camera
2 footage, does it have sound?

3 A. The first minute -- so, the way the body worn camera
4 works is when you turn it on -- it's like technically always
5 on -- but when you hit it to turn it on to get the sound, the
6 minute prior to that incident, um, has no audio.

7 THE COURT: Are we still in the first minute?

8 THE WITNESS: Yes. It's like forty seconds in
9 right now.

10 THE COURT: Okay.

11 THE WITNESS: Now it's on.

12 THE COURT: Uh-huh.

13 MR. MANISCALCO: Stopping at one minute.

14 (Video stopped.)

15 Q. And is it fair to say, Officer, that this is the point
16 where you first activated your body worn camera?

17 A. Yes, sir.

18 Q. And based on the way body worn cameras work, when you
19 press it, it will capture only the video from a minute prior to
20 you pressing that button?

21 A. Yes.

22 Q. But it does not capture the audio?

23 A. Yes, sir.

24 Q. But the moment you press the button it will capture
25 both the video and audio, is that correct?

1 A. Yes, sir.

2 MR. MANISCALCO: Playing from one minute on the
3 player.

4 (Video played.)

5 MR. MANISCALCO: I am pausing at one minute and
6 fourteen seconds.

7 (Video stopped.)

8 Q. Officer, this individual on the left of the screen, who
9 is that?

10 A. Officer Kissane.

11 MR. MANISCALCO: Playing from one minute and
12 fourteen seconds.

13 (Video played.)

14 Q. Now, Officer, we are at one minute and thirty-eight
15 seconds on the player. It looks like we are looking at the sky.
16 Is that because you were laying on floor or because you dropped
17 your body worn camera?

18 A. The body worn camera fell off my chest.

19 (Video stopped.)

20 MR. MANISCALCO: Playing from one minute and
21 thirty-eight seconds.

22 (Video played.)

23 MR. MANISCALCO: Pausing at two minutes and
24 seventeen seconds.

25 (Video stopped.)

1 Q. Officer, is there a video surveillance of this
2 incident?

3 A. Yes, sir.

4 Q. And did you have an opportunity to view that video
5 surveillance?

6 A. Yes, sir.

7 Q. And when you viewed the video surveillance, do you see
8 yourself on that video surveillance?

9 A. Yes, sir.

10 Q. And after watching the video surveillance, was it a
11 fair and accurate depiction of the incident that occurred on
12 January 18th?

13 A. Yes, sir.

14 MR. MANISCALCO: Now, I am going to switch over to
15 the video surveillance that's in evidence already under
16 People's Exhibit 6. We moved it in previously and we agreed
17 that we were going to be admitting the portion of this video
18 where Police Officer Gjonbalaj first enters, as he is
19 authenticating from that point to the point where he is no
20 longer visible. And it starts at nineteen thirty-eight.

21 Now, I am in People's 6. I am opening the file
22 that says Video 48PCT. There is a file that says 2356
23 Lorillard Place.

24 (Video played. Video stopped.)

25 MR. MANISCALCO: I am advancing to nineteen

1 thirty-eight on the player and I am playing from there.

2 (Video played.)

3 MR. MANISCALCO: Pausing at nineteen forty-four on
4 the player.

5 (Video stopped.)

6 Q. Officer, do you see yourself?

7 A. Yes, sir.

8 Q. Where are you?

9 A. I am the officer approaching C [REDACTED] W [REDACTED] right
10 there, the gentleman by the car.

11 MR. MANISCALCO: Okay. And I am going to play
12 from nineteen minutes and forty-four seconds on the player.

13 (Video played.)

14 MR. MANISCALCO: I am pausing at twenty minutes
15 and two seconds on the player.

16 (Video stopped.)

17 Q. Officer, there is a police officer standing to your
18 left, who is that?

19 A. I believe that's Officer Pennant.

20 MR. MANISCALCO: Playing from twenty minutes and
21 two seconds on the player.

22 (Video played.)

23 MR. MANISCALCO: Stopping at twenty minutes and
24 fifty-seven seconds.

25 (Video stopped.)

1 Q. Officer, who is the officer in the middle of the screen
2 with the flashlight?

3 A. I believe that's Officer Kissane.

4 MR. MANISCALCO: I am going to back this up to
5 twenty minutes and twenty-seven seconds.

6 (Video played.)

7 Q. Now, I can see where you are, Officer. Behind you
8 would be who -- this officer?

9 A. Pennant.

10 Q. Officer who?

11 A. Pennant.

12 Q. Okay. And to Officer Pennant's left facing the screen,
13 who is that?

14 A. Officer Kissane.

15 Q. And Officer, there's a number of civilians that are --

16 MS. FLORIO: So sorry, I couldn't hear. Is that
17 Officer Kissane?

18 THE WITNESS: The other one to my left is Officer
19 Kissane.

20 MS. FLORIO: Thank you.

21 Q. And Officer, there is a number of civilians that are on
22 the sidewalk holding their cell phones out. Do you recognize any
23 of them?

24 A. I don't believe so.

25 (Video stopped.)

1 Q. Now, Officer Kissane, do you know if he had body worn
2 camera on him?

3 A. Yes, sir.

4 Q. And was it recording at this time?

5 A. Yes, sir.

6 Q. And prior to --

7 THE COURT: How would he know? How would he know
8 if the other officer's body worn camera was recording at
9 that time?

10 THE WITNESS: Um, when you turn it on it blinks
11 red. This part, this portion of it blinks red.

12 THE COURT: So, with all this going on, you were
13 look at him, at his chest, to see if the light was blinking?

14 THE WITNESS: He was directly to my left at one
15 point.

16 When I turn my camera on -- so, the way we work
17 is, when one of us goes live everyone goes live. When one
18 of us turns our cameras on, everyone turns their cameras on.

19 THE COURT: Okay.

20 Q. And also, did you have an opportunity to view Officer
21 Kissane's body worn camera for this incident after this incident
22 occurred?

23 A. Yes, sir.

24 Q. And when you viewed Officer Kissane's body worn camera,
25 did you see yourself on it?

1 A. Yes, sir.

2 Q. And the point in time which you saw yourself on it, was
3 that a fair and accurate depiction of the events that occurred on
4 January 18th?

5 A. Yes, sir.

6 MR. MANISCALCO: At this time, I am seeking to
7 move into evidence body worn camera from Officer Kissane,
8 um, from the portions that Officer Gjonbalaj is visible, as
9 he can authenticate that video as he was there and he
10 watched it.

11 THE COURT: But how could you authenticate it?
12 It's going to be a different angle. How could you say what
13 is happening at that angle was happening --

14 MR. MANISCALCO: He was present during the
15 incident, Judge. Same thing with most video surveillance.

16 THE COURT: If I am looking this way and
17 somebody's looking that way, I can't say that what happened
18 that way in the opposite direction is what was going on
19 because I am not looking in that direction.

20 So, just because we are all there -- I don't -- do
21 you have any objection?

22 MS. FLORIO: I do have an objection.

23 MR. MANISCALCO: Judge, if you are present there
24 and you had an opportunity to observe the events as they
25 were unfolding, you can authenticate it.

1 It's the same thing with just like video
2 surveillance. There is video surveillance of a robbery that
3 is occurring if he the victim is there and there is a person
4 there with a knife. Even --

5 THE COURT: If the victim is there standing there
6 looking at the walls crouched down in a corner they cannot
7 authenticate it. So, that's not a true statement. Just
8 because you're --

9 MR. MANISCALCO: Well --

10 THE COURT: -- just because you're in a room
11 doesn't mean you are seeing everything's that is happening
12 in the room.

13 MR. MANISCALCO: Right. It's the portion that
14 he's on. The body camera is facing him and facing the
15 defendant. He is there. He is on the, he is on the body
16 worn camera.

17 THE COURT: Is his face in it?

18 MR. MANISCALCO: Yes.

19 THE COURT: What is your objection?

20 MS. FLORIO: I am objecting because my position is
21 that the officer whose body worn camera it is he should get
22 on the stand and testify.

23 THE COURT: I mean we --

24 MR. MANISCALCO: I can play the body worn camera
25 for Officer Kissane and you will see Officer Gjonbalaj who

1 is visibly on it -- you can't get closer to the guy.

2 THE COURT: I believe we addressed this before the
3 retention proceeding started.

4 We addressed that, um, the body worn camera, the
5 videos that we are going to -- that were consented to were
6 the videos for the officers that were testifying. I believe
7 we addressed this on the last date.

8 MR. MANISCALCO: We also said that we would be
9 willing to admit the portions of the video which the person
10 can be seen on.

11 THE COURT: No, no, no, that was with respect --
12 we -- there was an agreement regarding the surveillance
13 video to admit the portion from when the officers got there
14 until when they were leaving.

15 I do not recall agreeing to anything involving the
16 other officers that were not testifying in and their body
17 worn camera.

18 MR. MANISCALCO: So, no, I agree with Your Honor
19 that we just agreed to that video portion when we put it in.

20 I, I guess what I am asking Your Honor is that --
21 to view the body worn camera for Officer Kissane in the same
22 light in that, allow the portions that Officer Gjonbalaj was
23 physically on, come in the same way we are allowing that
24 video surveillance to come in -- because it is -- he is
25 right there.

1 THE COURT: But if we have this video surveillance
2 that is showing -- that's higher up -- and it is able to
3 show everything that is going on, why do we need -- and we
4 have this officer, and we have the last officer, and I
5 believe you have another officer -- why do we need the body
6 worn camera of another officer who is in the fray?

7 So, we are going to be seeing the same type of
8 situation with his fellow officer we are going to be seeing
9 bits and pieces of it up and down, how would that add more
10 than this?

11 MR. MANISCALCO: Well, first off, it adds
12 additional sound, audio. You can hear the gunshot clearly
13 in Officer Kissane's body worn camera.

14 THE COURT: There is no disputing that a gun went
15 off. There is absolutely no disputing that a gun
16 discharged.

17 MR. MANISCALCO: And --

18 THE COURT: Correct, counsel?

19 MS. FLORIO: Correct. Correct.

20 MR. MANISCALCO: And second, Your Honor, that body
21 worn camera video is very up close and gives the closest
22 angle to Officer Gjonbalaj behind the defendant as the
23 defendant is up against that vehicle.

24 THE COURT: And why would that be something that
25 we need? Why is that relevant? Why do we need that?

1 MR. MANISCALCO: Well, it shows --

2 THE COURT: Because he is up against the vehicle,
3 against the vehicle -- his back is pressed against the
4 vehicle?

5 MR. MANISCALCO: No, his front is pressed against
6 the vehicle.

7 THE COURT: So, he is pressed against the vehicle
8 either at or right after the point that the gun goes off.

9 MR. MANISCALCO: Correct.

10 THE COURT: Why do we -- why do we need that?

11 MR. MANISCALCO: I think it gives an -- it gives
12 additional sound. It gives another angle for Your Honor to
13 view. And, um, it gives you a fuller picture.

14 Your Honor, if you, if you are against it coming
15 in, you know, I am not going to --

16 THE COURT: I don't see how that adds a fuller
17 picture. The surveillance video adds a fuller picture
18 because it is further back and allows you to see the whole
19 street and everything happening.

20 MR. MANISCALCO: And I --

21 THE COURT: A bunch of officers on top of one
22 person -- I cannot -- I cannot wrap my brain around how you
23 figure that's going to help me see better -- when, when they
24 are literally all on top -- they are right beside each
25 other.

1 So, how is that going to give a clear image of
2 what is going on?

3 MR. MANISCALCO: It gives a closer image of the
4 time where the gun was discharged.

5 THE COURT: Again, no disputing a gun being
6 discharged. None.

7 So, so, no, that's not coming in.

8 MR. MANISCALCO: Then Your Honor can take a look
9 at -- make the determinations as to where people's hands
10 are, people's arms are.

11 THE COURT: The video last time was very clear as
12 to that.

13 MR. MANISCALCO: Okay. I understand.

14 THE COURT: From Officer --

15 MS. FLORIO: Pennant.

16 THE COURT: -- Officer Pennant's video --
17 actually, because Officer Pennant was standing right --
18 seemingly beside this officer, and his video was aimed
19 straight towards the defendant.

20 So, you saw his hands, actually, clearly, the
21 whole video.

22 So --

23 MR. MANISCALCO: Well, this is at the time where
24 the officer and the defendant are behind the vehicle and the
25 gun is discharged. It's a different moment.

1 THE WITNESS: No.

2 THE COURT: No. All right.

3 Go ahead.

4 MR. MANISCALCO: Continue?

5 THE COURT: Uh-huh.

6 MR. MANISCALCO: Playing the video or my
7 questioning?

8 THE COURT: You can go ahead with your
9 questioning.

10 MR. MANISCALCO: Okay.

11 Q. Now, Officer, directing your attention to --

12 MR. MANISCALCO: Actually, let's go to the video.
13 (Video played.)

14 Q. Now, Officer, during your interaction with the
15 defendant, did you ever see a gun?

16 A. I myself did not.

17 MR. MANISCALCO: Now, I am stopping at twenty
18 minutes and thirty-six seconds on the player.

19 (Video stopped.)

20 Q. When -- during the time that you and the defendant are
21 in this location the time that the gun goes off, um, you are
22 holding the defendant from behind, correct?

23 A. I am behind him, yes.

24 Q. Is there at any point that you --

25 THE COURT: Are you behind him or are you holding

1 him from behind?

2 THE WITNESS: I, I, as far as I recall, once I
3 was behind him was, kind of like -- I don't recall if I was
4 like trying to grab on to his right arm, because I was more
5 a little bit on the right side instead of the left side.
6 So, since I was on that side, I would trying to go for his
7 right arm.

8 THE COURT: But you were not just standing behind
9 him, you, you were grabbing him somewhere?

10 THE WITNESS: I was trying to grab him, yes.

11 THE COURT: Okay.

12 Q. And at any point do you grab anything that feels like a
13 hard object that could be a firearm?

14 A. No.

15 MR. MANISCALCO: Just one moment, Your Honor.

16 THE COURT: Put your mask over your nose, please.
17 From the audience.

18 Thank you.

19 MS. FLORIO: So sorry.

20 THE COURT: Not you.

21 MS. FLORIO: My client said that at some point he
22 needs to use the rest room. It's sort of like an emergency.
23 I think he can wait another five minutes, but I just wanted
24 to let the Court know that.

25 THE COURT: Can you use the one right there or no?

1 MR. MANISCALCO: Judge, I have no further
2 questions.

3 THE COURT: Okay. Can we approach just very
4 quickly?

5 Can you hold it a few minutes?

6 THE WITNESS: Yes.

7 THE COURT: All right. Come up.

8 (Whereupon, a conference was held at the bench by
9 the Court and counsel, off the record.)

10 THE COURT: So, we are going to break for lunch
11 now. It is 12:48. So, come back at 2:30.

12 THE WITNESS: Okay.

13 THE COURT: Come back at 2:30.

14 (Whereupon, the witness, Police Officer Taulant
15 Gjonbalaj, stepped down from the stand and exited the
16 courtroom.)

17 (Whereupon, a luncheon recess was taken.)

18
19
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1 (Continued following a luncheon recess.)

2 THE CLERK: Recalling Number 1 [REDACTED]
3 Calendar, under Indictment [REDACTED], in the matter of
4 the People of the State of New York against C [REDACTED] W [REDACTED].

5 Please note all appearances are as previously
6 noted.

7 THE COURT: All right.

8 So, um, you want to call Officer Gjonbalaj back
9 in?

10 MR. MANISCALCO: Yes.

11 THE COURT: You are ready for your cross, right?

12 MR. MANISCALCO: Joseph Maniscalco, for the
13 People.

14 Your Honor, yes, the People would call Police
15 Officer Gjonbalaj back to the stand.

16 The People intend to conclude their questioning
17 and allow for defense to start cross.

18 THE COURT: Oh, I thought you were done.

19 MR. MANISCALCO: I am not sure if I put it on
20 record.

21 No, I am finished.

22 THE COURT: All right. Okay.

23 MR. MANISCALCO: Just for the record, I am not
24 sure if --

25 THE COURT: You did. I think you said you were

1 done.

2 MR. MANISCALCO: I did? Okay.

3 COURT OFFICER: Witness entering.

4 (Whereupon, the witness, Police Officer Taulant
5 Gjonbalaj, entered the courtroom and took the stand.)

6 THE CLERK: Officer, I'd like to remind you that
7 you are still under oath.

8 THE WITNESS: Okay, Miss.

9 MS. FLORIO: May I proceed, Your Honor?

10 THE COURT: Yes.

11 CROSS EXAMINATION

12 BY MS. FLORIO:

13 Q. Good afternoon, Officer.

14 A. Good afternoon.

15 Q. You indicated that you had known C [REDACTED] W [REDACTED] prior
16 to January 18th, 2022, correct?

17 A. Yes, ma'am.

18 Q. And did you -- you had multiple interactions with him
19 in person?

20 A. I had one interaction that I recall right now.

21 Q. And when was that interaction?

22 A. I believe he is sixteen years old right now, so, I
23 believe it was when he was fourteen he got arrested for the same
24 thing, possession of a firearm -- a loaded firearm.

25 Q. And that was when he was in Family Court, correct?

1 A. Yeah. I don't know that I was, I was there at the
2 incident. I transported him back to the precinct. I have no
3 idea what happened with that case.

4 Q. Okay, but you understand that that wasn't a loaded
5 firearm, it was an actual -- it was an unloaded gun, correct?

6 A. I don't know that.

7 Q. Okay. So, your interaction with him in person was when
8 he had -- when he was fourteen years old, correct?

9 A. Uh-huh.

10 Q. And you had transported him back to what precinct?

11 A. 4-8.

12 Q. And is that the same precinct you work at now?

13 A. Yes.

14 Q. Was that your only interaction with him?

15 A. Repeat the question?

16 Q. Was that your only physical interaction with Camrin
17 Williams?

18 A. That I recall, yes.

19 Q. Okay. And you knew his name, correct?

20 A. Yes, ma'am.

21 Q. And his -- you also knew that he was a Rapper, correct?

22 A. I know that he Raps.

23 Q. Okay. And, do you know his RAP name that he goes by
24 when he Raps?

25 A. I believe it was his nickname, [REDACTED]

1 Q. [REDACTED]

2 So, on the evening of January 18th of 2022, you
3 indicated that you were in an unmarked vehicle, correct?

4 A. Yes, ma'am.

5 Q. And your vehicle did not pass the location of 2356
6 Lorillard prior to you stopping, correct?

7 A. I don't believe, no.

8 Q. It was the other vehicle that Officer Pennant,
9 Rodriguez, and Kissane were in that you had received or someone
10 from your car received a telephone call, correct?

11 A. We had received a phone call, then we met up afterwards
12 and spoke in person, yes.

13 Q. Was it you that received the telephone call?

14 A. I, I don't recall who received the phone call.

15 Q. So, based upon that telephone call, you responded to
16 the location, correct?

17 A. We responded to another location, and then we spoke in
18 person. And then we went to that location.

19 Q. And when did you actually turn your body camera on?

20 A. Once I approached C [REDACTED] W [REDACTED], spoke to him about
21 the -- what he was doing there -- I saw that his phone was out,
22 he started recording, I turned my body camera on.

23 Q. So, when you were actually walking up the street, up
24 Lorillard towards the building, as we saw in the body camera, you
25 said you had encountered a person you knew as J [REDACTED] L [REDACTED]

1 correct?

2 A. I saw him, yes.

3 Q. And did -- you said his nickname was [REDACTED] correct?

4 A. Yes.

5 Q. And you didn't have a conversation with [REDACTED] L [REDACTED] at
6 that particular time, did you?

7 A. No.

8 Q. You didn't ask him any questions?

9 A. No.

10 Q. You didn't ask him why he was calling [REDACTED]?

11 A. No.

12 Q. And you didn't frisk Mr. L [REDACTED] at that time, correct?

13 A. No.

14 Q. And you didn't frisk the other individual, correct?

15 A. No.

16 Q. So, you proceeded to walk towards the entranceway of
17 2356 Lorillard Place, correct?

18 A. Yes.

19 Q. And when you were walking, you said that you had
20 observed Mr. W [REDACTED] correct?

21 A. As there were two individuals exiting the building.

22 Q. Now, you actually saw with your own eyes Mr. Williams
23 walking towards a silver car, correct?

24 A. Yes.

25 Q. Now, you say that you saw him come out of the building.

1 Did you ever see him actually inside the building?

2 MR. MANISCALCO: Objection.

3 A. I did not see that.

4 THE COURT: What is your objection?

5 MR. MANISCALCO: How could you come outside of the
6 building if you were not inside to begin with?

7 THE COURT: Do you mean did this Officer ever
8 observe him standing in the building?

9 MS. FLORIO: Correct.

10 THE COURT: Or did he just see him for first time
11 when he was outside the building?

12 THE WITNESS: I only saw him exiting the
13 building.

14 Q. When you say exiting the building, what do you mean
15 which that?

16 A. That he opened the door and walked out.

17 Q. So, you saw the video surveillance actually on the
18 right side of the screen, correct?

19 A. I saw that video surveillance, yes.

20 MS. FLORIO: Can we just play it from the
21 beginning?

22 MR. MANISCALCO: The surveillance video?

23 MS. FLORIO: Yes.

24 MR. MANISCALCO: Just for the record, I have
25 opened Grand Jury Exhibit 6, it the video surveillance,

1 Video 5.

2 I am going play from nineteen twenty-eight.

3 Q. Just before we start, can you see it very well over
4 here?

5 A. I can see fine, I believe, yeah.

6 Q. Okay. I will just ask to you stop it when the first
7 time you yourself actually see with your own eyes Mr. Williams.

8 A. Okay.

9 (Video played.)

10 MS. FLORIO: Okay, stop it.

11 (Video stopped.)

12 Q. Did you see the door open?

13 A. Did I see the door open?

14 Q. Yes?

15 A. I don't recall if I actually saw the door open. I know
16 he came out of the building though.

17 Q. Can we just rewind it?

18 A. That's too far, I think.

19 Q. So, there's a step there before the building, correct?

20 A. There's a step before the building?

21 Q. Yes?

22 A. Yes.

23 Q. And there's a window, correct?

24 A. There is -- the door has a glass screen door in it,
25 yeah.

1 MS. FLORIO: Okay, stop it right there.

2 (Video stopped.)

3 Q. So, you don't know if Mr. W [REDACTED] was actually in the
4 building, correct? You just saw him towards -- the door's
5 actually blocking him, correct?

6 A. I saw the door open and two individuals coming out of
7 the building.

8 Q. But you didn't see them actually come, like in the
9 building, walking out of the building, correct?

10 A. All I saw was the door being opened and two individuals
11 coming out of the building.

12 Q. So, walking towards -- you saw Mr. W [REDACTED] walking
13 towards the car?

14 A. I saw him walking towards his vehicle.

15 Q. Okay.

16 A. Or wherever -- if that's his vehicle.

17 Q. That's the silver vehicle, correct?

18 A. Yeah.

19 MS. FLORIO: Okay. Continue.

20 MR. MANISCALCO: Continuing from nineteen
21 forty-two on the player.

22 (Video played.)

23 MS. FLORIO: So, stop right there.

24 (Video stopped.)

25 Q. So you -- actually, at that particular time,

1 Mr. Williams was not doing anything illegal, correct?

2 A. As far as I know, he was a part of the disorderly
3 group.

4 Q. Okay, but you -- when you approached him --

5 A. Uh-huh.

6 Q. -- you did not see him reach for a weapon, correct?

7 A. I didn't see him reach for anything other than his
8 phone.

9 Q. And in fact at that particular time you did not have --
10 you did not activate your body camera, correct?

11 A. At that time of? Immediately? No.

12 Q. No.

13 In fact, the time that you turned on your body cam is
14 after Mr. Williams took his phone and started filming you,
15 correct?

16 A. That part is true, yes.

17 Q. Okay. And you could see his hands right here, correct?

18 A. Yes.

19 Q. When you approached him?

20 A. I approached him, I put my hands up just to show him
21 that I wanted him to put his hands up.

22 Q. And his hands were -- you could see his hands --

23 A. Yes.

24 Q. -- right?

25 And then you said he took his phone, correct?

1 A. Correct.

2 Q. And started filming you?

3 A. Yes.

4 Q. And at any time you didn't see him like reach for
5 anything of except his cell phone, is that correct?

6 A. Like at that point, no.

7 MS. FLORIO: Keep going.

8 MR. MANISCALCO: Playing from nineteen minutes and
9 forty-seven seconds.

10 (Video played.)

11 Q. In fact --

12 MS. FLORIO: Stop it right there.

13 (Video stopped.)

14 Q. -- Mr. Williams actually backs up, correct?

15 A. Uh-huh.

16 Q. And he still has his phone in his hand and he is
17 recording you, correct?

18 A. Yes.

19 MS. FLORIO: Okay. Continue.

20 MR. MANISCALCO: Playing from nineteen minutes
21 forty-nine seconds.

22 (Video played.)

23 Q. You're asking -- you're having a conversation, correct?

24 A. Uh-huh.

25 Q. And this is Officer Pennant approaching you?

1 A. Yes.

2 Q. And you are still having a conversation, correct?

3 A. Yes.

4 MS. FLORIO: Okay. Stop it right there.

5 (Video stopped.)

6 Q. Is that, is that -- I saw that you touched something on
7 your --

8 A. Yes.

9 Q. -- on your, on your, um --

10 A. Chest.

11 Q. -- on your chest. Is that when you activated the body
12 camera?

13 A. Yes, ma'am.

14 MS. FLORIO: Okay. Continue.

15 MR. MANISCALCO: Playing from twenty minutes and
16 six seconds on the player.

17 (Video played.)

18 MS. FLORIO: Stop it right there.

19 (Video stopped.)

20 Q. So, at this time you actually zipped down Mr. W [REDACTED]
21 zipper --

22 A. Jacket -- yeah.

23 Q. Correct -- his jacket.

24 And when you touched him at that particular time, you
25 don't see any weapon, correct?

1 A. I could not see any weapon at that point.

2 Q. Okay. And --

3 MS. FLORIO: Continue.

4 MR. MANISCALCO: Playing from twenty minutes and
5 twelve seconds.

6 (Video played.)

7 Q. So, you were touching his pocket, correct?

8 A. I frisked his left jacket pocket, yes.

9 Q. And are you also touching his waistband?

10 A. I am holding on to his front jacket pocket -- not
11 jacket pocket -- his front hoody pockets, because he was just
12 moving around a lot. I was just trying to gain control of him.

13 Q. So, at this point --

14 MS. FLORIO: Stop it right there. At this
15 particular point the time stamp is --

16 MR. MANISCALCO: Twenty minutes and thirty-four
17 seconds on the player.

18 (Video stopped.)

19 Q. So, you did not see any weapon on Mr. W [REDACTED]
20 correct?

21 A. I did not.

22 Q. And no one called out to you to say that he had a
23 weapon, correct?

24 A. No one called out to me.

25 Q. And in fact, um, after you frisked him, you didn't feel

1 any gun, correct?

2 A. I frisked his front left jacket pocket, there was no
3 firearm in his front left jacket pocket.

4 Q. Okay. At this point, Mr. W [REDACTED] is trying to walk
5 away from you, or run away, correct?

6 A. He turned around and ran, yes.

7 Q. And --

8 MS. FLORIO: You can continue.

9 MR. MANISCALCO: Twenty minutes and thirty-four
10 seconds.

11 (Video played.)

12 MS. FLORIO: Okay, stop it right there.

13 (Video stopped.)

14 Q. So, this is Officer Pennant, right?

15 A. Officer Pennant is behind me, Officer Kissane to the
16 left.

17 Q. This is Officer Kissane, right?

18 A. Yes.

19 Q. And where is Camrin Williams?

20 A. I am directly in front of Pennant, he is directly in
21 front of me.

22 Q. And at this time that Pennant is behind you, is this
23 the time that you're -- do you hold on to C [REDACTED] W [REDACTED]?

24 A. To his back, maybe his top right portion of his
25 shoulder, arm maybe.

1 Q. His right arm, correct?

2 A. Yes.

3 Q. Because you're on his right-hand side, correct? And
4 Kissane is holding his left-hand side, correct?

5 A. He is on his left-hand side, yes, holding on to
6 something on his left-hand side.

7 Q. He is holding his arm, correct?

8 A. As far as I know.

9 Q. And it is during this interaction over here when
10 Officer Pennant is behind you, it's you and Officer Kissane, that
11 the gun goes off, correct?

12 A. I'm sorry, say that one more time?

13 Q. It is at this time when you are actually on the hood of
14 this other car --

15 A. Yes.

16 Q. -- that's in front --

17 A. Yes.

18 Q. -- that's when the gun goes off, correct?

19 A. Correct.

20 Q. And you find out that Camrin had been shot, correct?

21 A. I knew that he shot himself.

22 Q. He shot himself?

23 A. Yes.

24 Q. Well, you don't know how the gun went off, do you?

25 A. I know he had it at that point once it went off --

1 Q. Right --

2 A. -- because none of us would have shot.

3 Q. But Officer --

4 A. Yes?

5 Q. -- you are grabbing him, correct?

6 A. Correct.

7 Q. And Officer Kissane is grabbing him, correct?

8 A. Correct.

9 Q. And a shot goes off, correct?

10 A. Yes.

11 Q. And you don't actually see the gun, correct?

12 A. No, I did not see the firearm.

13 Q. You did not see it on Mr. W [REDACTED] correct?

14 A. I did not see it, no.

15 Q. And in fact Officer Pennant never told you that he had
16 seen a gun, correct?

17 A. Officer Pennant did not.

18 Q. He did not tell you?

19 A. At the time of? No.

20 Q. So, when the shot went off, you had no idea that
21 Mr. W [REDACTED] had a gun on him, correct?

22 A. Once the shot went off, you can hear on my body camera,
23 I am telling him you shot yourself. I knew he shot himself.

24 Q. Okay. My question is, at the time that the shot went
25 off --

1 A. Uh-huh.

2 Q. -- you were startled, correct?

3 A. I was startled, yes.

4 Q. Okay. Before the shot went off and you had your hands
5 holding Mr. W [REDACTED] and you and Officer Kissane are on top of
6 him, you didn't know he had a gun, correct?

7 A. Before the shot went off, no, I did not know he had a
8 firearm.

9 MS. FLORIO: Okay, if we can just show this.

10 MR. MANISCALCO: Playing from twenty minutes and
11 thirty-six seconds on the player.

12 (Video played.)

13 MS. FLORIO: Okay. Stop.

14 (Video stopped.)

15 Q. So, at no time does Officer Pennant pull out his gun,
16 correct?

17 A. No.

18 Q. So, what we see in Officer Pennant's hands is a taser,
19 correct?

20 A. Yes.

21 Q. And you never pulled out your gun, correct?

22 A. No.

23 Q. And Officer Kissane never pulled out his gun, correct?

24 A. No. As far as I know, no.

25 Q. I'm sorry?

1 A. As far as Kissane, I don't know.

2 Q. And there is only one shot, correct?

3 A. Correct.

4 Q. And you knew that C [REDACTED] W [REDACTED] had gotten shot,
5 correct?

6 A. I knew that he shot himself.

7 Q. The question was, you knew that he had been shot,
8 correct?

9 A. Yes.

10 Q. And you also knew that Pennant had been shot, correct?

11 A. I did not.

12 Q. At some point you learned that Pennant had been shot,
13 right?

14 A. Yes. Right. Another officer told me.

15 Q. And in fact is Pennant is directly in back of you, and
16 you and C [REDACTED] is directly in front of you, correct, when the
17 shot goes off?

18 A. Correct.

19 MS. FLORIO: You can have a seat. That's fine.
20 Thank you.

21 (Referring to the Prosecutor.)

22 Q. Now, when the body cam goes on, the first thing that
23 C [REDACTED] says is "why though, why am I getting searched," correct?

24 A. Correct.

25 Q. And then you say, "I am just going to give you --"

1 MR. MANISCALCO: Objection.

2 Judge, um, the body camera -- if we are getting
3 into the dialogue -- the body camera has the specific, um,
4 dialogue back and forth. Um, it's already in evidence. We
5 know what that conversation was.

6 THE COURT: Where are you going with this?

7 MS. FLORIO: I just want to ask him a couple of
8 questions about what was said and why he said it.

9 THE COURT: All right. Well, if it's not what he
10 said then, you know, you can say that, you can say that's
11 not what he said.

12 MR. MANISCALCO: Okay.

13 THE COURT: Or if he doesn't remember -- if you
14 don't remember what you said.

15 Q. So, after C [REDACTED] says "why am I getting searched?"
16 You don't tell him why you are searching him, correct?

17 A. I didn't search him.

18 Q. Okay. Why you're frisking him. You don't tell him why
19 you are touching him, right?

20 A. I did not immediately frisk him so I didn't tell him
21 anything in regards to it.

22 Q. But you do tell him that you are just going to give him
23 a frisk, right, a quick frisk?

24 A. Right.

25 Q. And basically you tell him to keep his hands up,

1 correct?

2 A. Correct.

3 Q. And he at some point handed the phone over to -- the
4 cell phone that he was recording you with, he handed it over to
5 his friend, correct?

6 A. I am not going to lie, until I saw the footage from the
7 building, I didn't even know where his phone went until I saw
8 that, then, I guess, he must have handed it to his friend.

9 Q. Okay, but at some point he doesn't have the cell phone
10 in his hand any more, correct?

11 A. Yes.

12 Q. When you were there, from what you remember, correct?

13 A. Yes.

14 Q. And you see him put his hands up, correct?

15 A. Yes.

16 Q. And then you ask him -- you tell him keep your hands up
17 and you will be okay, right, you will be all right?

18 A. Uh-huh.

19 Q. You tell him that, right?

20 A. Yes.

21 Q. And then you say, do you have anything on you, correct?
22 Do you remember asking him that?

23 A. Yes.

24 Q. And then he is like "nah," no, right? And then you
25 just time him relax, just relax, um, just -- just stand right

1 there. I don't know why you are moving around so much, just stop
2 moving around. You tell them that, right?

3 A. Yes.

4 Q. And then C [REDACTED] says "I don't know why I am getting
5 touched." He says that, right?

6 A. Yes.

7 Q. And then you say, "just relax yourself, okay," correct?

8 A. I believe so.

9 Q. And then C [REDACTED] says, "I just want to know why, I just
10 want to know why, like why are you touching me".

11 A. Okay.

12 Q. Do you recall him saying that? I just want to know
13 why?

14 A. I believe so, yeah.

15 Q. And then you just say "relax. Like I said, put your
16 hands up, you will be all right, bro, like you said, you have
17 nothing on you, correct? Stop moving around."

18 You tell him that, correct?

19 A. Yes.

20 Q. Then C [REDACTED] says, "why you all doing this bro," right?

21 A. Okay.

22 Q. And then you say, "just stop moving around and you will
23 be all right," correct?

24 A. I believe so.

25 Q. And that's when C [REDACTED] screams and he says, "oh, he

1 shot me, he shot me, he shot my leg"?

2 A. Well, that's when he turns around and he ran into the
3 car and we grabbed him and then he shot himself, yes.

4 Q. Okay, I didn't ask you that question.

5 I am asking you, did C [REDACTED] say that "he shot me, he
6 shot me, he shot my leg," did he say that?

7 MR. MANISCALCO: Objection.

8 A. After --

9 THE COURT: Did you hear him say that or not?

10 A. -- after the incident happened, I guess, yeah, he did
11 turn around, he said "you guys shot me" or "you shot me," or
12 something like that.

13 Q. Okay. And then you say "stop moving." Where you shot?
14 Because you didn't even know he was shot at that particular time,
15 correct?

16 A. I didn't know at what point immediately I told him
17 that. I know I was asking him where is it, as in, where is the
18 firearm.

19 Q. And C [REDACTED] says, "I don't know nothing"?

20 A. Yeah.

21 Q. "I just heard a pop, I don't know nothing." He says
22 that, correct?

23 A. I believe so.

24 Q. And then you say "what the F did you do that -- you're
25 an idiot." You tell him that, right?

1 A. Yeah.

2 Q. And then he says "I was just going to my car," right?
3 He says that?

4 A. I -- maybe possibly, yes.

5 MR. MANISCALCO: I am going to object. We are
6 going line by line through the body worn camera.

7 MS. FLORIO: I am almost done, I have one more
8 line.

9 THE COURT: One more line.

10 Q. And you say "you're an idiot, C [REDACTED] W [REDACTED] right,
11 C [REDACTED] W [REDACTED] right, listen to me, I know who you are bro, what
12 are you doing?" You tell him that, right?

13 A. Yes.

14 Q. And then he just -- just to end it, he says "why do you
15 all have to do this? Call my mom, please. Why do you still got
16 me standing here?"

17 And that's basically what he says then, correct?

18 A. I guess. I don't recall.

19 Q. And anytime -- at anytime when C [REDACTED] W [REDACTED] is
20 pinned up against that car, the second car, not the silver car.

21 A. Yes, I know.

22 Q. When you and Officer Kissane are surrounding him and
23 trying to grab him --

24 A. Uh-huh.

25 Q. -- at any time do you see C [REDACTED] W [REDACTED] take a gun

1 and point it at Officer Pennant?

2 A. I didn't see him take out the firearm or point it at
3 anyone.

4 Q. And in fact, you didn't even know he had a firearm,
5 correct?

6 A. Not until the round went off.

7 Q. Correct.

8 And in fact, you didn't even know where the firearm --
9 you had kept asking him where is the firearm, where is the gun,
10 right?

11 A. Correct.

12 MS. FLORIO: May I have a moment just to consult
13 with my client?

14 I think I am almost done.

15 THE COURT: Uh-huh.

16 (Brief pause.)

17 MS. FLORIO: Your Honor, I have no further
18 questions.

19 Thank you.

20 THE COURT: No problem.

21 Anything?

22 MR. MANISCALCO: Nothing further from the People.

23 THE COURT: Thank you.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness, Police Officer Taulant

1 Gjonbalaj, stepped down from the stand and exited the
2 courtroom.)

3 THE COURT: Do you want like five minutes?

4 MR. MANISCALCO: Yes, Judge.

5 THE COURT: Off the record.

6 (Discussion held, off the record.)

7 MS. FLORIO: Your Honor I just want to hand up
8 what I had written up with respect to the argument --

9 THE COURT: Okay.

10 MS. FLORIO: -- to you.

11 THE COURT: Thank you.

12 (Brief recess.)

13 THE CLERK: Recalling the matter of the People of
14 the State of New York against C [REDACTED] W [REDACTED]

15 All parties remain the same.

16 MR. MANISCALCO: May I, Judge?

17 THE COURT: Uh-huh.

18 MR. MANISCALCO: Judge, in this Retention Hearing,
19 it is the People's -- the People bear the burden. The
20 People submit to Your Honor that we have proved, by a
21 preponderance of the evidence, pursuant to CPL 722.23(2)(c),
22 that during this incident that occurred on January 18th of
23 2022, outside of 2356 Lorillard Place, the defendant
24 displayed a firearm in furtherance of an offense. And that
25 during this incident, the defendant caused significant

1 physical injury to Police Officer Pennant.

2 Your Honor has heard testimony and has seen the
3 People's evidence. The entire incident is captured on video
4 surveillance, and the interaction with the police officers
5 are captured on body worn camera surveillance.

6 We can see on this video, Your Honor, when Officer
7 Gjonbalaj approached the defendant, we can see, we can see
8 the frisk of the defendant, and we can see the moment that
9 the firearm is first displayed during this frisk.

10 And we heard testimony from Police Officer Pennant
11 that, that it as at that time, while looking at this body
12 camera when he first saw the firearm.

13 Your Honor, at this point the People do concede
14 that the firearm was first displayed during this frisk,
15 however, at the point when the defendant turned his body and
16 attempted to flee the police, the People submit that it is
17 the defendant who was displaying the firearm that was
18 originally exposed by police officers during this incident.

19 And further, Judge, when -- um, and -- so,
20 Your Honor, um, focusing on that incident, or at that time
21 when the, um, when the firearm was first seen on body worn
22 camera, that the People are submitting that at that moment
23 the defendant realized that what the officers had, um, had
24 observed -- or what has now been exposed to the officers,
25 and the defendant, we submit at that time, realized the

1 trouble that he was now in. And he then turned and he
2 attempted to flee police officers with that firearm
3 displayed, and as he is attempting to flee the police
4 officers there is a continued display, but this time it is
5 on the defendant's own actions, his, um -- the defendant's
6 decision to not stay and comply with officers, but to flee.

7 And we submit, Your Honor, that during this time
8 period it is the defendant who is displaying the firearm to
9 officers that was initially, um, um, that was initially seen
10 during the frisk between the defendant and Officer
11 Gjonbalaj.

12 Um -- Your Honor -- you heard testimony that this
13 firearm was later discharged when the defendant was
14 apprehended, um, shortly after he attempted to flee.

15 You heard testimony that it was recovered, it was
16 vouchered, it was sent to a lab and the lab found that it
17 was operable. Those labs are in evidence.

18 You also heard testimony and saw testimony that
19 there was a shot fired. That the shot, um, was heard on
20 body worn camera. It was heard by the officers, which also
21 goes to the operability of the firearm.

22 Your Honor, this incident then -- the discharge of
23 this firearm then resulted in significant physical injury,
24 not only of Police Officer Pennant, but I would argue the
25 defendant as well. Um, but in this case, the People have

1 the burden of proving that significant physical injury was
2 caused to somebody who was not a participant of the crime.

3 And Your Honor heard testimony from Police Officer
4 Pennant who testified that when the gun was discharged, he
5 suffered a, um, bullet wound to the leg. That bullet wound,
6 that bullet wound scarred, that bullet wound, um -- there
7 was scarring after the incident as a cause of this bullet
8 wound. He suffered numbness to the area. And he also
9 testified that he lost feeling to the area.

10 Your Honor, the People submit that this injury
11 that was -- this injury that was sustained by Police Officer
12 Pennant rises to the level of significant physical injury.
13 It is an injury -- and a significant physical injury, under
14 the law, is not well defined, as Your Honor knows. It is
15 some place that's above physical injury and short of serious
16 physical injury.

17 And we are submitting that this scarring, the
18 numbness, and the loss of feeling, especially given the
19 circumstances that this is a result of the discharged
20 firearm, um, prove -- proves that, um, Police Officer
21 Pennant suffered significant physical injury under CPL
22 722.23.

23 And, Your Honor, um, considering these reasons,
24 the People submit that we have proved, based upon the
25 evidence, by a preponderance of the evidence, that the, um,

1 the defendant displayed a firearm when he was, um -- when he
2 was attempting to flee the police officers, and as a result,
3 that firearm was discharged, and Police Officer Pennant
4 suffered a significant physical injury, that being the
5 bullet wound to his leg.

6 And for those reasons we ask Your Honor find that
7 we have met our burden as to those two prongs and allow the
8 People to retain this case.

9 THE COURT: Thank you.

10 Ms. Florio?

11 MS. FLORIO: Your Honor, CPL 722.23(2)(c) lays out
12 the criteria for removal.

13 These factors are the defendant caused significant
14 physical injury to another person other than a participant,
15 which, of course, would be himself, um, or displayed a
16 firearm, or the defendant engaged in unlawful sexual
17 conduct.

18 The People have failed to meet their burden of the
19 preponderance of the evidence on three prongs.

20 What constitutes significant physical injury is
21 very unclear, it is not defined by the Statute, however,
22 both the penal law and the legislative history offer insight
23 onto this point.

24 For the purposes of the penal law, serious
25 physical injury is defined in Penal Law Section 10.00, which

1 states: Serious physical injury means physical injury which
2 creates a substantial risk of death, or which causes death
3 or serious and protected disfigurement, protracted
4 impairment of health, or protracted loss or impairment of a
5 function of any bodily organ.

6 The Court noted in the case of People v. B.H.,
7 that during debates the Assembly noted that serious physical
8 injury would be an injury more serious than a bruise, and
9 would likely involve a bone fracture, an injury requiring
10 surgery, and injuries resulting in disfigurement.

11 The People failed to show how serious physical
12 injury under either standard. The Felony Complaint states
13 that the officer was grazed. And we know the officer was
14 grazed. It was not a bullet wound that punctured his leg,
15 this was a ricochet. That is what Officer Pennant testified
16 to.

17 On the body worn camera video from the injured
18 officer, Officer Kaseem Pennant, at around 2.14, you can
19 hear Officer Pennant calmly state, "Yo, I'm shot." To which
20 another officer responds, "Are you serious?" Before
21 beginning to inspect Officer Pennant for his wounds.

22 So, prior to this, Officer Pennant is seen moving
23 around, with no apparent difficulty, telling bystanders to
24 back up, while brandishing a taser.

25 There is no substantial risk of death, nor any

1 serious or protracted disfigurement or impairment of health
2 or loss your impairment of the function of any bodily
3 organs, nor was there any bone fracture injury which
4 required surgery, or injury resulting in disfigurement.

5 In fact, Officer Pennant had testified that he was
6 brought to the hospital, he was treated and released, and he
7 was given medication, but he could not even really remember
8 what the medication was.

9 I would also note that no medical records of
10 Officer Pennant were entered into evidence.

11 In addition, the assault charge in the complaint
12 is charged as Penal Law Section 120.05 -- and also, I'm
13 sorry, in the Indictment, Penal Law 120.05(3), which states,
14 in relevant part, that a person is guilty of Assault in the
15 Second Degree when with intent to prevent a police officer
16 from performing a lawful duty, he or she causes physical
17 injury to said police officer.

18 The complaint does not charge serious physical
19 injury as would constitute Assault in the Second Degree
20 under Penal Law Section 120.05(1).

21 There is nothing preventative said charge from
22 being brought under the two theories, as being clear in the
23 original complaint, now the Indictment, charges Criminal
24 Possession of a Weapon in the Second Degree under two
25 subsections.

1 The People cannot claim the significant,
2 significant injury in a case where they are willing or
3 unable to charge the defendant causing serious physical
4 injury.

5 Officer Pennant testified, in fact, that he did
6 not even know there had been a shot at first. He was able
7 to walk and didn't really feel anything at the time. That's
8 what he testified to.

9 When Officer Pennant stated that he was shot,
10 another officer had approached him, and he did not even
11 realize that Officer Pennant was shot.

12 At this time, for comparison, my client,
13 Mr. W [REDACTED], was in obvious distress, he was screaming.

14 Officer Pennant has returned to active duty, as to
15 the last time he testified, after being grazed.

16 Officer Pennant stated that he had to take
17 medication, but there is no record or proof that this was
18 provided to the Court.

19 So, he simply could have taken something to
20 prevent the possibility of an infection. The fact that the
21 medication had been taken should not hold any weight against
22 Mr. W [REDACTED] without proof being provided as to what the
23 medication was.

24 The People have the burden of the preponderance of
25 the evidence, and they cannot argue that Mr. W [REDACTED]

1 injuries satisfy this prong, as the injury must be to
2 someone other than a participant in this offense.

3 The Assembly's main sponsor of the RTA, which is
4 Raise The Age Bill, stated that a three factor test required
5 the defendant to be the sole actor who caused the conduct
6 outlined. There is a distinct possibility that the firearm
7 alleged to be possessed by the defendant went off due to the
8 conduct of the officers, as the defendant never touched it.

9 In addition, Officer --

10 MR. MANISCALCO: Objection.

11 THE COURT: What is your objection?

12 MR. MANISCALCO: There is no, um, there is no
13 evidence that suggests that it is the officer who
14 discharged -- who discharged the gun.

15 THE COURT: The video is in evidence. I have seen
16 the video.

17 Go ahead.

18 MS. FLORIO: In addition, Officer Pennant stated
19 that the gun went off after officers grabbed Mr. W [REDACTED].

20 The People have not yet shown that the defendant
21 was the sole actor who caused the conduct outlined, as the
22 Legislators clearly intended. Even when I asked Officer
23 Gjonbalaj, do you know how the gun went off, he kept saying,
24 oh, that the defendant -- he doesn't know -- he didn't see
25 it.

1 I am arguing to the Court based upon what is seen
2 on the body worn camera, based upon what we see with respect
3 to the video -- the video surveillance -- um, that no one
4 really knows how this gun went off, but I submit,
5 Your Honor, that it very well could have been Officer
6 Gjonbalaj who had his hands on the right side of the
7 defendant who, you could see, um -- that my client's hands
8 in the video -- and that how could my client like fire a
9 weapon, um, if he is being held up against a car by two
10 large men?

11 There is no displaying of a firearm from the
12 video. You cannot see a firearm being displayed at any
13 point.

14 The People cannot argue that simple possession of
15 a firearm satisfies this prong. If the Legislature intended
16 "simple possession" to suffice, they would have said so.
17 They intentionally chose to require that a firearm be
18 displayed.

19 Were the People to argue that the firearm became
20 visible during the struggle, this would likewise fail to
21 satisfy the requirement of the Statute.

22 The display, which is not specifically defined, is
23 to put or spread before the view -- to make evident to
24 exhibit us to -- you know, basically to have it out open and
25 notorious.

1 Now, you saw my client standing on the street by
2 a car. He was not doing anything. He did not take out a
3 gun. He did not -- he did not, you know, shoot it in the
4 air. He did not play with this gun. The gun was not
5 visible at all.

6 The People's allegation is that the defendant had
7 concealed a firearm on his person, which was later seen by
8 officers during a struggle, when the officers attempted to
9 search Mr. W[REDACTED]. That is not in any way a display of a
10 firearm.

11 To allow the facts here to display of a firearm
12 would undermine the clear language of the Statute.

13 Officer Pennant testified that officers touched
14 Mr. W[REDACTED] before the firearm was allegedly seen.

15 Officer Pennant was asked, did you in fact see
16 Officer Gjonbalaj unzip the jacket of Camrin Williams, to
17 which the officer responded yes. Officer Pennant stated
18 that he did not see a bulge or firearm before Officer
19 Gjonbalaj put his hands on Mr. W[REDACTED]. And, in fact,
20 Officer Gjonbalaj said the same thing on the stand today.

21 Um, in fact, prior to that, Officer Pennant stated
22 that he didn't see anything, so did Officer Gjonbalaj on the
23 stand today. It was only after the officers, and I submit,
24 illegally opened the coat, that Officer Pennant allegedly
25 saw a firearm which was visible.

1 However, even that testimony is strange, because
2 if an officer, if an officer sees a firearm on somebody, he
3 doesn't say anything. Like, he should have at least called
4 out, he could have taken out his gun.

5 And I submit, Your Honor, that if Officer Pennant
6 actually really saw a firearm on my client's waistband, that
7 we would be in a very different situation today.

8 I submit, Your Honor, that only after watching the
9 videos does Officer Pennant actually realize that, um, he
10 sees a firearm.

11 Officer Pennant stated that Mr. W. [REDACTED] did not
12 take out the gun, did not point it at anyone, did not touch
13 the gun, did not reach for the gun, and did not even reach
14 in the general vicinity of the waistband area. And he was
15 in the best position to see.

16 Um, we know that Officer Gjonbalaj --
17 coincidentally -- his body worn camera falls off of him,
18 however, Officer Pennant is in the best position to see what
19 is actually going on when he is in back of Officer Gjonbalaj
20 and Officer Kissane.

21 Now, in essence, the People are arguing that the
22 defense constituted a display of a firearm because in the
23 process of searching the defendant the officers observed the
24 firearm in question. Such a determination would mean that
25 every case of Criminal Possession of a Weapon involving

1 displaying of a firearm, as a firearm was displayed to
2 officers when they found it. The drafters of this
3 legislation explicitly and unambiguously decided to require
4 display of a firearm as opposed to mere possession. The
5 People's argument asks the Court to rewrite the Statute.

6 So, those are my arguments with respect to the two
7 prongs that the People are arguing.

8 If the Court would ask me -- I know that the
9 People did not argue extraordinary circumstances -- I think
10 that the Court has to rule first with respect to that and
11 then we go to the extraordinary circumstances.

12 THE COURT: All right.

13 So, we have a 3:30 -- and we can actually -- are
14 the People -- the People are not withdrawing their
15 extraordinary circumstances motion, correct?

16 MR. MANISCALCO: Correct.

17 THE COURT: All right.

18 And, Ms. Florio --

19 MS. FLORIO: I can rely on my record.

20 THE COURT: -- you provided your written
21 opposition. And with respect to the extraordinary
22 circumstances, that can be done on the record. So, we can,
23 we can do both this afternoon, but --

24 MR. MANISCALCO: Sure.

25 THE COURT: -- I am going need a minute. We have

1 a 3:30, and then just give me -- can we just do 4:00
2 o'clock?

3 MS. FLORIO: Sure.

4 THE COURT: We'll do 4:00 o'clock for decision on
5 both, okay?

6 MS. FLORIO: Okay.

7 THE COURT: Let's say 4:10.

8 MR. MANISCALCO: Decision this Friday, Judge?

9 THE COURT: No, because she gave me -- I thought
10 she was going to give me her papers. I just need to look
11 over them one more time.

12 So, lets do -- just to be safe -- 4:15. I just
13 need a minute.

14 MS. FLORIO: Sure. Thank you.

15 THE COURT: Okay.

16 (Whereupon, the calling of the calender resumed.)

17 THE CLERK: Recalling the matter of the People of
18 the State of New York against C[REDACTED] W[REDACTED].

19 All parties remain the same. We are appearing in
20 person.

21 THE COURT: All right.

22 So, with respect to the six day appearance, um,
23 you will receive the written decision probably at some point
24 tomorrow, but I am just going to read a few pertinent parts.

25 My mask is off only because I am going to be

1 reading more than like a paragraph. So, it's easier.

2 CPL 722.23(2)(c)(i), requires that the defendant
3 cause significant physical injury to a person other than a
4 participant in the offense.

5 The CPL did not define the term "significant
6 physical injury" when it enacted CPL 722.23, and the
7 Legislature has not given precise meaning to the term.
8 However, it has been understood that the term falls
9 somewhere between physical injury and serious physical
10 injury, as defined by the New York Penal Law.

11 Article 10 of the New York State Penal Law defines
12 physical injury as an impairment of physical condition or
13 substantial pain.

14 However, serious physical injury is described as
15 physical injury which creates a substantial risk of death,
16 or which causes death or serious and protracted
17 disfigurement, protracted impairment of health, or
18 protracted loss of impairment -- or impairment of the
19 function of any bodily organ.

20 When there is significant physical injury, in
21 order to retain a case in the Youth Part, based on
22 CPL 722.23(2)(c)(2)(ii), the People must prove, by a
23 preponderance of the evidence, that the defendant, A-O, was
24 the person who actually caused the injuries to the victim.

25 Further, CPL 722.23(2)(c)(i)(i), which the People

1 argue is relevant in this matter, require that the defendant
2 displayed a firearm in furtherance of such offense.

3 Penal law 265 defines firearm as any pistol,
4 revolver, any deadly weapon. And any deadly weapon is
5 defined in the Penal Law as any loaded weapon from which a
6 shot readily capable of producing death or other serious
7 physical injury may be discharged.

8 When there is a question of whether a defendant
9 displayed a firearm, courts have held that the CPL requires
10 that in order for an A-O's case to be disqualified for
11 removal to the Family Court, the People must prove, by a
12 preponderance of the evidence, that the A-O showed or
13 exhibited an actual firearm or deadly weapon, as defined in
14 the Penal Law.

15 Moreover, the words "in furtherance of such an
16 offense" requires that the People prove that an adolescent's
17 display of a firearm was done in order to advance or promote
18 the underlying felony with which the adolescent is charged.

19 The People in this case moved, pursuant to CPL
20 722.23(2)(c)(i), and (ii), and they sought to prove the
21 defendant caused significant physical injury to a person
22 other than a participant in the events, and that the
23 defendant displayed a firearm, shotgun, rifle, or deadly
24 weapon, as defined in the Penal Law, in furtherance of such
25 offense.

1 The People called Police Officers Pennant and
2 Officer Gjonbalaj to testify, and moved seven items into
3 evidence as People's Exhibits 1 through 7, respectively.
4 The voucher for the firearm recovered from the A-0, the
5 operability lab report for said firearm, photo of the
6 firearm, two photos of Officer Pennant's injury, body worn
7 camera footage from Officers Pennant and Gjonbalaj, as well
8 as video surveillance from in front of 2356 Lorillard Place
9 in the Bronx.

10 The Court credits the testimony of P-O -- of
11 Officer Pennant, but finds Officer Gjonbalaj to be largely
12 incredible and unreliable.

13 This Court reviewed the language in the Accusatory
14 Instrument, and considered all of the evidence admitted and
15 finds as follows:

16 On January 18th, 2022, at approximately 9:27 p.m.,
17 several officers drove past a residential building located
18 at 2356 Lorillard Place in Bronx County.

19 Officer Pennant, who was seated in the rear of the
20 police car and had a clear view into the building lobby,
21 observed approximately ten to fifteen people standing in
22 said building congregating.

23 He then radioed for back-up and proceeded to
24 circle the block then park. Officer Gjonbalaj was part of
25 said back-up. He parked and walked towards the building as

1 the A-0 exited the building.

2 Officer Gjonbalaj approached the A-0,
3 Mr. W[REDACTED] as he attempted to enter his vehicle, which
4 was legally parked directly outside the building.

5 Officer Gjonbalaj asked Mr. W[REDACTED] questions as
6 to why he was in the building and who he was visiting.

7 Mr. W[REDACTED] then asked the officer, "why you all
8 doing this, why you all doing this?" While holding his
9 hands up and then holding his cellphone up to record the
10 exchange with the officer.

11 Officer Gjonbalaj then replied, "I have to search
12 you." Officer Gjonbalaj goes on to unzip -- hold on --
13 unzip Mr. W[REDACTED] coat, and pat the pockets. He also
14 grabs at Mr. W[REDACTED]' hood to, in his words, "gain control
15 of him." He then lifts up Mr. W[REDACTED] sweater and white
16 shirt to reveal what appears to be the handle of a firearm
17 in Mr. W[REDACTED] waistband.

18 Someone yells "gun." The defendant turns to run.
19 Officer Gjonbalaj reaches for the A-0's right side, while
20 Officer Pennant grabs his left side, as everyone hears a
21 pop.

22 A-0 yells, "he shot me, someone shot me." As
23 Officer Pennant turns around and points his taser on
24 onlookers while walking towards them saying "back up, back
25 up."

1 A moment later, Officer Pennant pulls another
2 officer aside and says, "I think I'm shot." That other
3 officer leans down towards Officer Pennant's leg and asks,
4 "For real? Are you serious? Where?"

5 Video from Officer Pennant's body worn camera
6 corroborated the fact that he did not appear to know he was
7 shot, as he was clearly still standing, still mobile, and
8 still very much able to give commands and assistance in
9 securing the scene.

10 Officer Pennant was taken to the hospital and
11 treated for a gaze wound. He was given a bandage, given
12 some medicine, and was sent home.

13 The video from Officer Pennant's body worn camera
14 clearly shows that this A-0 was relatively calm and
15 cooperative throughout the encounter. He did not attempt to
16 reach for a weapon at any time, as the A-0's hands are
17 observed to be up and visible prior to the shooting and
18 during the exchange.

19 Both officers testified that they did not observe
20 the A-0 to reach for a weapon at any time.

21 Officer Pennant in his testimony repeatedly stated
22 that he never observed the A-0 to reach for a gun, to take
23 out a gun, to point a gun, or to reach for his waistband.

24 He further testified that the first time he saw a
25 weapon was after Officer Gjonbalaj unzipped the A-0's coat

1 and lifted up the A-O's sweatshirt.

2 Officer Gjonbalaj testified that he thoroughly
3 patted-down the A-O and did not feel any hard objects at any
4 time, yet, he still unzipped his coat and lifted up his
5 sweatshirt.

6 He went on to testify that at no time before the
7 shot had he seen a gun. A statement that is wholly
8 discredited by the video and the audio from Officer
9 Pennant's body worn camera.

10 To retain this case in this part, the People must
11 prove that this defendant displayed a firearm or deadly
12 weapon to advance or promote the crime with which he is
13 charged.

14 The People must prove that, one, the victim
15 suffered a significant physical injury, and two, that the
16 defendant actually caused the significant injury.

17 However, it is clear that this defendant in this
18 case never touched or showed a gun, and he did not directly
19 fire any bullet that injured Officer Pennant.

20 So, having carefully considered the language used
21 in the Accusatory Instrument, the additional hearsay-based
22 facts asserted by the People and defense, and the documents
23 entered into evidence, it cannot be said that the People
24 have met their burden. The People have not proven, by a
25 preponderance of the evidence, that this individual

1 displayed a firearm, or that this individual caused
2 significant physical injury to the officer.

3 So, as such. This case should be removed to the
4 Family Court.

5 With respect to removal, the People have filed an
6 extraordinary circumstances motion. Um, I have read the
7 motion, and the People in the motion rely very heavily on

8 Officer Gjonbalaj. Someone who, um, I cannot state how

9 absolutely incredible his testimony was. It was

10 inconsistent with the video. It was inconsistent with his

11 fellow officer's testimony. It was self serving. It had no

12 value.

13 So, because of that, I think it is especially
14 important that I look at all of the exhibits that they
15 attached to the motion, and, um -- before that's decided.

16 So, we are still going to do that on Friday at
17 9:45.

18 But I find this case extremely troubling.

19 In large part -- while I understand there are very
20 specific things we are addressing in these six day
21 proceedings -- while I understand that, I find it troubling
22 when very obvious bad behavior is completely ignored just to
23 get to the alleged bad behavior of the person charged.

24 There was seemingly from the video, from the
25 testimony, there was absolutely zero reason for any of those

1 officers to approach this individual. They approached him.
 2 They detained him. They searched him. And no officer even
 3 bothered to come up with a half way legitimate reason for
 4 any of that. Nor did the People even attempt to elicit a
 5 reason for it.

6 The fact that Officer Gjonbalaj testified that two
 7 years ago he was the officer that transported this
 8 individual to the precinct when he was arrested, and somehow
 9 he knows everything about him. He knows he doesn't live in
 10 the building. He knows he doesn't know anybody in the
 11 building. I would like to believe that troubles the People
 12 as much as it troubles me.

13 I also do have to note that while there was no
 14 disputing the fact that Mr. W [REDACTED] had a gun on him that
 15 night, it appears from the video -- and I think this part is
 16 very, very important -- and I think this is probably why
 17 this bothers me so much -- on that video, the video from --
 18 especially the video from Officer Pennant -- where you have
 19 a clear view between -- the video from Officer Pennant,
 20 coupled with the video surveillance -- you have a clear view
 21 of the front on of Mr. W [REDACTED].

22 During the exchange, he literally does everything
 23 you tell your child to do when they are approached by the
 24 cops. He literally kept his hands up. He literally tried
 25 to record it to make sure there was proof. He literally --

1 he answered questions he had no obligation to answer.

2 He was trying to get into his vehicle. He clicked

3 it. He was opening the door and he was stopped. He

4 literally did everything he was supposed to do.

5 And somehow we are here. Somehow he is shot.

6 I cannot -- I cannot state enough how disturbing

7 and disappointing that is to me, especially when the

8 officer, who, quite frankly, caused the injury, had the

9 audacity to sit here and try to act like they were the

10 victim.

11 I truly hope that the People spend more time
12 evaluating the quality of their witnesses, the quality of
13 the officers, and the cases that they choose to try to
14 prevent removal for, because we should not be here right
15 now.

16 This hearing should not have had to happen.
17 Absolutely not.

18 So, Friday, 9:45.

19 Have a good night.

20 Bye.

21 THE DEFENDANT: Thank you.

22 THE COURT: You will get the decision. It will be
23 emailed to you at some point.

24 Thank you.

25 Off the record.

1 (Brief pause.)

2 THE COURT: Do you want to waive until next --

3 MS. FLORIO: Can we just approach?

4 THE COURT: Yes.

5 (Whereupon, a conference was held at the bench by
6 the Court and counsel, off the record.)

7 THE COURT: Back on the record.

8 9:45 on Tuesday, March 15th.

9 Thank you. For decision. Virtual.

10 MS. FLORIO: Will my client be able to be on
11 virtual?

12 THE COURT: Yes, he will get the link.

13 THE CLERK: I will send you the link, not the
14 e-mail. Send him the link.

15 MS. FLORIO: Okay. Thank you.

16 So, Tuesday, 9:45. Thank you.

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19 REPORTER'S CERTIFICATION:

20 I hereby certify that the foregoing
21 is a true and accurate transcript of the
22 proceedings held in the above matter.

23 
24 Peter Kent
25 Senior Court Reporter